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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H4

[redacted]

Date: AUG 1 3 2012 Office: CLEVELAND FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Cleveland, Ohio, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), and the matter is now on appeal with the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who last entered the United States on or about December 27, 1990 without inspection. The record reflects that the applicant submitted various applications for immigration benefits; however, was ultimately placed into removal proceedings and granted voluntary departure on January 7, 2000. The applicant failed to depart and the order of voluntary departure converted into a removal order. *See* Section 240B(d) of the Act. The applicant subsequently filed for and was granted temporary protected status. The applicant also married a U.S. citizen on August 11, 2003. Her U.S. citizen spouse filed a Petition for Alien Relative (Form I-130) on November 18, 2003 naming the applicant as beneficiary. The applicant later filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) and an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212).

On June 9, 2010 the Field Office Director denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) finding that the favorable factors in the applicant's case did not outweigh the negative factors.

On appeal, counsel for the applicant states that the evidence submitted demonstrates that after a balancing of the equities the positive factors in the applicant's case outweigh the negative factors.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act states in pertinent part:

> (A) Certain aliens previously removed.-
>
> ...
>
> (ii) Other aliens.-Any alien not described in clause (i) who-
> (I) has been ordered removed under section 240 or any other provision of law, or
> (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
> (iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.
>
> ...

8 C.F.R. § 212.2(e) states that,

> (e) Applicant for adjustment of status. An applicant for adjustment of status under section 245 of the Act and part 245 of this chapter must request permission to reapply for entry in conjunction with his or her application for adjustment of status. This request is made by filing the application on the form designated by USCIS. If the application under section 245 of the Act has been initiated, renewed, or is pending in a proceeding before an immigration judge, the district director must refer the application to the immigration judge for adjudication.

The record reflects that the applicant was granted voluntary departure by the Immigration Judge on January 7, 2000. She did not depart the United States by May 9, 2000 and the Immigration Judge's order then became a removal order. *See* Section 240B(d) of the Act. As a result of the applicant's removal order, she is inadmissible to the United States for a period of 10 years from the date of her departure or removal from the United States pursuant to section 212(a)(9)(A) of the Act.[1] The applicant has not departed the United States nor has she been removed. On Form I-130 the petitioner indicated that the applicant "would apply for a visa abroad at the American consular post in Cleveland, Ohio." Because that is not possible, it was assumed that the applicant would apply for adjustment of status at the USCIS office in Cleveland, Ohio. The record; however, does not reflect that the applicant has filed an application for adjustment of status.[2] As there is no underlying application for adjustment of status, no purpose would be served in adjudicating the Application for Permission to Reapply for Admission to the United States after Deportation or Removal (Form I-212). 8 C.F.R. § 212.2(e). The Form I-212 was properly denied by the Field Office Director.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish she is eligible for the benefit sought. After a careful review of the record, the AAO finds that the applicant has not met her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[1] The AAO notes that the applicant also filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) stating the applicant's removal order as the ground of inadmissibility to be waived. Inadmissibility under 212(a)(9)(A)(ii) of the Act is overcome through an application for Permission to Reapply for Admission after Deportation or Removal (Form I-212), not by filing Form I-601.

[2] The AAO notes that despite counsel's assertions on appeal, the I-130 was approved on October 28, 2005 and the approval notice was sent to the petitioner. The remarks section of the approval notice states that "Your petition will remain in your file at the Cleveland District Office. You must file Form I-485 to continue processing your application for permanent residence."